ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED

NOV 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
Applications of SBC Communications, Inc.	)	CC Docket No. 98-141
and Ameritech Corp. for Consent to	)	
Transfer Control of Licenses.	)	

REPLY COMMENTS

OF THE

COMPETITION POLICY INSTITUTE

Ronald J. Binz, President
Debra R. Berlyn, Executive Director
John Windhausen, Jr., General Counsel

1156 15th St. N.W. Suite 520
Washington, D.C. 20005
Phone: 202 835-0202
Fax: 202 835-1132

No. of Copies rec'd 0+12
List ABCDE

November 16, 1998

REPLY COMMENTS OF THE
COMPETITION POLICY INSTITUTE
ON THE PROPOSED SBC - AMERITECH MERGER

I. INTRODUCTION

Should the United States have a single dominant national telephone company? This is the essential policy question the Federal Communications Commission must answer when it considers the proposed merger of SBC and Ameritech.

The same logic that the applicants employ to justify this merger can also be used to justify the merger of the remaining large incumbent LECs into a single national telephone company. Economic and operational efficiencies, the need to bulk up in order to compete, and homage to the natural forces of the marketplace can all be cited to support the combination of the remaining large local exchange companies into a single national company. The Competition Policy Institute urges the Commission to consider today the consequences of taking the applicants' reasoning to its logical conclusion. The Commission should not agree to cross this bridge later.

To be clear, the logic given in support of this merger is *no different* than the logic that will be used to justify the merger of all the remaining RBOCs and GTE into a single company. **If the Commission accepts these arguments now, it will be pressured to accept them later in the context of an even larger ILEC merger. In other words, if the Commission plans to reject this logic later, then the Commission should reject it now.**

If the announced mergers are approved, the number of large incumbent local telephone companies will have been reduced from 8 to 4 in just three years. Approval of the SBC-

Ameritech merger will signal that any future mergers are acceptable, and the Commission is likely to face applications to merge all the remaining large ILECs in the near future.

Such a colossus, with at least $100 billion in annual revenues, would be one of the world's largest companies. It would exercise a sobering degree of influence over the nation's communications system, its political system and consumers' daily lives. A single national telecommunications company could effectively decide which telecommunications services would be deployed and on what schedule, what prices would be charged (within the limited regulatory restraints that currently exist), which telecommunications standards should be established, the pay scales and working conditions for hundreds of thousands of employees, which manufacturers' products are acceptable, which information services would receive favorable access to the telephone network, the uses of customers' proprietary network information, which international services are supported, etc. In addition, the national telephone company could have far-reaching influence over non-telecommunications aspects of our lives. This single firm would have a dominant influence in social and political spheres through its support of charitable organizations and contributions to political candidates.

If the FCC approves the pending merger, the Commission must face the possibility that this vision becomes reality. This vision stands in contrast to a competitive local exchange market where all of these influences are much more diffused and, most importantly, controlled by the forces of competition.

In its evaluation, the Commission must determine whether this merger satisfies the public interest. In the past, the Commission has employed an extensive discussion of the economic benefits and disadvantages of these mergers. But the Commission should not make the mistake of limiting its public interest evaluation to a mechanical or formulaic comparison of dollar figures. Since passage of the Telecommunications Act of 1996, the public interest is inextricably tied to the development of competition in the telecommunications industry. Similarly, the Commission should not use its public interest authority simply to replicate the antitrust analysis performed by the Department of Justice and other antitrust authorities.[1] The public interest test is inherently broader inquiry that "leaves wide discretion and calls for imaginative interpretation."[2] CPI urges the FCC to consider the implications of its decision on this SBC-Ameritech merger on future mergers and the future of this industry.

The remainder of these comments discusses why the proposed merger would be contrary to the public interest and why the FCC should deny this and future mergers of large ILECs unless and until the companies follow through on Congress's requirements to open the local telephone network to competition.

II. THE COMMENTS DEMONSTRATE THAT THE MERGER FAILS TO MEET THE PUBLIC INTEREST TEST BECAUSE THE POTENTIAL HARMS OF THE PROPOSED MERGER OUTWEIGH THE POTENTIAL BENEFITS.

As set forth in the ***Bell Atlantic Order,***[3] the Commission employed a balancing test to

---

[1] "[Administrative] agencies are not 'strictly bound by the dictates of [the antitrust] laws,' . . . .; rather, they are entrusted with the responsibility to determine when and to what extent the public interest would be served by competition in the industry." [cite to AT&T-McCaw order]

[2] *Federal Communications Commission v. RCA Communications, Inc.*, 346 U.S. 86, 90 (1953).

[3] *In the Matter of Application of NYNEX Corp. and Bell Atlantic Corp. For Consent to Transfer Control of NYNEX Corp. and its Subsidiaries*, 12 FCC Rcd 19985,

determine whether the public interest test is met with respect to each merger application. In conducting this balancing test, the Commission places the burden on the applicants to show that the merger is in the public interest. In the initial comments in this case, parties identified several significant potential harms from the merger. In the other direction, the purported benefits set forth by the applicants and their supporters are too speculative to deserve much credence.

Before reviewing the evidence specific to this merger, the Commission should recognize that these mergers occur against the backdrop of significant Congressional legislation. While Congress did not specifically indicate that mergers such as the pending ILEC mergers were contrary to its intent, it is clear that the pending mergers upset the careful balance Congress fashioned in passing the Act. In particular, Congress acted under the assumption that the RBOCs would remain independent competitors of each other.[4]

Unfortunately, the mergers of several key industry players has upset this balance to the detriment of competition and consumers. Since passage of the Telecommunications Act, the concentration of ownership in the communications industry has developed much faster than the growth of local exchange competition. If this industry consolidation continues unchecked, the pro-competitive goals that Congress endorsed in the 1996 Act may be impossible to achieve, with the result that consumers end up paying higher rates for lower quality service.

For this reason alone, the Commission should arrest the mergers of large incumbent local

---

Memorandum Opinion and Order (1997)(hereinafter "**Bell Atlantic Order**").

[4] See, section 273(a)("A Bell operating company may manufacture and provide telecommunications equipment, . . . except that neither a Bell operating company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates.")

exchange carriers until competitors have had an opportunity to obtain a significant presence in the marketplace. At this stage, the Commission cannot "unring the bell" by undoing its prior merger approvals. It can, however, keep the balance from becoming further out of kilter by denying the pending application until such time as these large incumbent local exchange companies make significant progress in opening their networks to competitors.

A. The Potential Harms from the Proposed Merger are Real and Significant.

In these comments, CPI will focus in on the particular damage to competition and consumers that these mergers will cause.[5] Of course, it is difficult to predict with certainty the exact effects that will flow from any merger. But there are several reasons why this merger is likely to harm the public interest. These factors include:

1. The proposed merger will eliminate a significant potential competitor and an actual competitor in each of the existing SBC and Ameritech regions.
2. The proposed merger would strengthen the incumbents' ability to thwart the growth of local competition.
3. The proposed merger will reduce the number of companies whose performance can be used to benchmark or compare one company against another.
4. The proposed merger will increase the opportunity for the merged company to leverage its market power into other markets.

---

[5] Several commenters give examples of actions taken by SBC and Ameritech to forestall competition. Many of these actions arise because SBC and Ameritech are seeking to protect their dominant position as near monopolists over local exchange service. These anticompetitive practices, and the incentives that motivate them, are likely to persist whether or not the merger is permitted. But these examples are nevertheless relevant to the FCC's public interest inquiry in evaluating this particular merger. First, they demonstrate that the possible harm that may result from the merger is not mere speculation, but has a strong basis in fact. Second, these examples illustrate the types of problems that will persist even longer and may grow even worse if the merger is permitted.

For these reasons, the FCC should find that the proposed merger of SBC and Ameritech is contrary to the public interest.

1. The proposed merger will eliminate a significant potential competitor and an actual competitor in each of the existing SBC and Ameritech regions.

This merger eliminates a significant potential competitors in the market for local telephone service. No companies are better equipped to provide competitive local telephone service than the companies who currently provide local telephone service. As Sprint points out in its comments,

> [SBC and Ameritech] have advantages in entering local markets that are unavailable to virtually all other potential entrants. These advantages include experience in providing local services, including expertise in established complex systems to handle administrative capabilities (billing, order taking, customer care, etc.) not enjoyed by such other possible entrants as cable companies or CAPs.[6]

The existing ILECs already have the marketing skills, the access to capital, the technological know-how, the management and employees to be significant competitors outside of their regions. Indeed, all of the efficiencies that the merger applicants allege would result from the merger are equally valid reasons to believe they would be efficient competitors outside their home markets.[7]

---

6 Sprint Comments, pp. 8-9.

7 The FCC should consider SBC and Ameritech significant potential competitors whether or not the parties had drawn up detailed business plans to enter each others' markets. The parties are already competing with each other in mobile services, in a variety of overseas services, and they are planning to compete with each other in long distance services once they receive approval under section 271. Indeed, the applicants' stated desires to become a full-service provider to customers with locations spread across the country demonstrates their incentives to provide competitive local telephone service outside of their own regions. It is thus reasonable for the Commission to predict that market forces will drive the companies to compete with each other for local telephone service even if they do not have explicit plans to do so today. The Commission has authority under the public interest to make these kind of predictive judgments.

Furthermore, the applicants are not only potential competitors, in some markets they are actual competitors. Ameritech has already entered the St. Louis market as a CLEC. Ameritech has also applied for and received approval to provide competitive service in two SBC states (California and Texas).

The loss of these actual and potential competitors would be a significant blow to the prospects of vibrant local exchange competition.

2. The proposed merger would strengthen the incumbents' ability to thwart the growth of local competition. market.

. The comments show that the proposed merger would increase *both the incentive and the ability* of the carriers to thwart competitive entry.

a. Increased incentives to discriminate.

The affidavit of Drs. Michael Katz and Steven Salop, attached to the comments of Sprint, demonstrate that the merged ILEC has greater reason to discriminate against the competitors that provide nationwide service than if the companies do not merge. This is because the effects of discrimination in one region of the country have "spillover effects" affecting the competitor's operations in other regions of the country as well. Katz and Salop give the following examples:

i. Long distance competitors.

> An IXC providing traffic among regions requires an interconnection at both ends of the call. If the ILEC providing terminating access to the IXC denies or degrades that access, then an ILEC competing with the IXC to offer long distance service at the originating end also will benefit. Thus, in the interexchange market, an exclusionary access policy by one ILEC towards IXCs will spill over and benefit other ILECs in other regions.[8]

ii. Competing local exchange carriers.

---

8 Katz and Salop Affidavit, p. 41.

> Exclusionary access policy by one ILEC directed toward multi-market CLECs can also benefit other ILECs. . . . if a CLEC suffers lower quality or higher costs, reduced market share, and lower profitability in one region, those factors will reduce the likelihood that it enters other regions as well. . . . In deciding whether to enter the business at all, a potential carrier will evaluate its overall expected profits for entry. . . . If the market-specific profits sum to less than the required return on their capital and common costs, then entry will be unattractive. Thus, an ILEC's actions that reduce the profitability of entry in one region can lower the likelihood of entry in all regions.[9]
>
> There also may be economies of scope associated with offering service in multiple local markets that affect variable costs (e.g., reduced costs of obtaining certain pieces of equipment whose use varies with the number of subscribers or calling volume). In this case, exclusion that reduces the entrant's volume in one market increases the entrant's variable costs in the other markets in which it is competing.[10]
>
> **iii. Combined services**
>
> A CSC [combined services carrier] may be offering advanced services that are subject to service-specific network effects (i.e., each service derives value from the fact that it is offered in a lot of places and allows many end users to communicate with one another). Exclusionary tactics in one region can weaken a CSC's ability to sell its entire suite of combined services in other regions by reducing customers' perceived quality of the advanced services that are included in that suite.[11]

According to Katz and Salop, in each of these cases the ILEC's actions in its own region affect the ability of the downstream market participant to compete in other regions. Before a merger, the ILEC may not account for these "spillover" effects. A merged company, however, will be able to capture some of these "spillover effects" in the newly merged region. The possibility of enhanced rewards will give the carrier greater incentives to act in anticompetitive ways. According to Katz and Salop:

---

9 Katz and Salop Affidavit, pp. 42-43.

10 Katz and Salop Affidavit, p. 44.

11 Katz and Salop Affidavit, pp. 44-45

For example, when SBC raises the cost of access to the IXCs, CLECs or CSCs in its region, SBC's foreclosure action may weaken the rivals' ability to offer service in Ameritech's region as well. If so, Ameritech derives an anticompetitive benefit from SBC's exclusionary conduct. Of course, before the merger, SBC would not take this spillover benefit to Ameritech into account. However, after the merger, SBC will take this spillover benefit accruing to Ameritech into account. As a result of internalizing these spillovers, SBC's incentives to raise rivals' costs would be increased. Similarly, the merger would raise the merged entity's incentives to engage in exclusionary behavior in Ameritech's region.[12]

b. Increased ability to discriminate.

Further, the merged company will have a greater *ability* to discriminate. First, it would have a greater revenue base that can be used to support predatory pricing. The merged company may be more willing to endure losses by pricing services below cost in markets that new entrants have targeted if they have a larger source of revenue from other services and markets.[13]

---

12 Katz and Salop, p. 38. See also, the example contained in the Declaration of Stanley Besen, Padmanabhan Srinagesh, and John R. Woodbury, attached to the Sprint Comments, p. 47-48 ("As one example, the higher costs or degraded service quality imposed on a CLEC inSBC's territory will result in the CLEC obtaining fewer customers in SBC's territory than it would otherwise attract. As a result, the CLEC may engage in less national advertising or invest less in upgrading its service quality than otherwise, and will be a less aggressive competitor in other geographic areas, which would likely include the Ameritech territory. Ameritech will then experience less competition and greater profits. . . . A merger between SBC and Ameritech internalizes this anticompetitive spillover and increases the incentives for exclusionary behavior.")

13 The fact that so many states have adopted price cap regulatory regimes may make it even easier for carriers to engage in predatory pricing. Many states allow carriers to lower prices with little or no regulatory review. Other regulatory regimes, including the FCC's price cap regime, allow the carriers to lower prices of certain services within a basket as long as the overall level of prices within the basket remain within a certain range. As a result of the states' and FCC's adoption of these pricing plans, it has become difficult or impossible to establish that carriers have engaged in anticompetitive price manipulation. This does not mean that regulators should abandon flexible regulatory regimes; it simply means that the increased size of the carriers, combined with their substantial market power over most services and their ability to exercise pricing flexibility, poses a risk to competition and to consumers that is very difficult to detect and prove. CPI suggests that the main weapon to combat this behavior is to insist that

Second, the size and scope of the merged companies' operations will make it even more difficult for state and federal regulators to protect against unlawful pricing behavior. In this proceeding, the applicants claim that any potential for discriminatory action can be monitored and prevented by regulation. Parallel arguments were raised in the context of the Commission proceeding concerning the limit on subscribers served by cable operators. In deciding that no cable operator should serve more than 30% of the nation's cable subscribers, the Commission found that

> [t]he 30% limit is a structural complement to the program access provisions. . . . structural regulation generally is more easily enforced and detected than conduct regulation. . . . Nevertheless, structural regulation imposes far fewer economic costs on the market than regulatory models that use primarily price or case-specific conduct regulation as a way to mitigate strategic, anticompetitive behavior.[14]

The Commission should recognize here, as it did in the cable context, that regulators have a limited ability to protect against anticompetitive behavior through behavioral regulations. Denying the proposed merger between SBC and Ameritech would thus be fully consistent with the Commission's adoption of a 30% limitation on subscribers by cable MSOs.

In addition, AT&T correctly notes that the merged companies would have the potential to share their "best practices" used to combat competitive inroads. (AT&T Comments, p.8) In other words, the sharing of these "best practices" may actually allow the merged companies to share their "worst tendencies" — their most successful means of keeping competitors out of the

---

competition develops before mergers proceed.

[14] *In the Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal Ownership Limits*, MM Docket No. 92-264, Memorandum Opinion and Order on Reconsideration and Further Notice of Proposed Rulemaking, June 26, 1998, para. 42.

market.

3. The proposed merger will result in the loss of a participant in the local telephone market that policy-makers can use to compare or "benchmark" one ILEC against another.

AT&T and Sprint accurately note that, with the diminution of large ILECs, regulators will find it more difficult to compare, or "benchmark", the practices of one ILEC against another. As an example, Sprint cites the Location Routing Number (LRN) method of implementing local number portability. At one point, all the ILECs except Ameritech insisted that LRN was impractical. Because Ameritech was willing to acknowledge the feasibility of LRN, the Commission was able to adopt this competitively superior technology.

CPI suggests that the Commission should consider other examples as well. In the course of the Commission's 1997 access charge proceeding, Bell Atlantic reached an agreement with AT&T that contemplated substantial reductions in access charges. Although this proposal was not ultimately adopted, it provided the Commission with both the political and economic justification for making significant reductions in access charges for the entire industry. The likelihood that an incumbent LEC would "break ranks" over an issue like access charge reductions is obviously diminished when the number of incumbent LECs dwindles.

In fact, the applicants themselves lend support to this concern when they argue that the merger will allow the companies to share their "best practices." It may be true that the sharing of information between the companies about their "best practices" will benefit consumers and the companies. But the benefits of comparing "best practices" could be achieved without the merger, simply by sharing the information in industry fora. On the other hand, if the companies are allowed to merge, the company is less likely to develop different responses to customer needs, or to experiment to solve problems in different ways. Regulators, consumers, competitors will have no idea whether the practices developed by the merged company are the "best practices" or not, because there will be fewer other ILECs with which to compare. By acknowledging that each company, pre-merger, has different practices, the applicants virtually acknowledge that there is diversity in the manner in which these companies market and provision services, deploy new technologies, etc. In this sense, the value that lies in this diversity of approaches to solving problems will be lost if the companies are allowed to merge.

4. The proposed merger will increase the opportunity for the merged company to leverage its market power into other markets.

The comments of the Consumer Federation of America raise the issue of whether the merged company will gain unprecedented power over products and services in downstream markets. This concern is especially appropriate given that the SBC-Ameritech merger would create a company serving well over 30% of the nation's access lines. The substantial increase in horizontal concentration that this merger will produce raises significant concerns about the merged company's ability to leverage its near-monopoly over local telephone service into other markets.

This is not a new concern for the Commission. In the cable television context, for instance, the FCC adopted an order limiting any cable operator to serving no more than 30% of the nation's cable customers. In that decision, the FCC found that a 30% limit would "prevent the nation's largest MSOs from gaining enhanced leverage from increased horizontal concentration".[15] This order was recently confirmed when the Commission found that

> The legislative history of Section 613 indicates Congress' concern that excessive horizontal concentration had the potential to facilitate the anticompetitive exercise of monopsony power and adversely impact the diversity of programming.[16]

There are several service and product markets that could be harmed by the aggregation of the applicants' local telephone businesses:

a. The equipment market.

By centralizing purchasing decisions, the merged RBOCs may have the incentive and ability to skew the manufacturing market by consolidating their purchase of certain equipment in an anticompetitive manner. (Concentration of ownership on the demand side can create an *oligopsony*, parallel to the concept of an oligopoly on the supply side.) This concern will become exacerbated once the RBOCs are allowed into the manufacturing market themselves.

b. The long distance market.

Several commenters point out that almost one-half of the long distance calls originating in the SBC-Ameritech region would also terminate in that region.[17] This will give the merged company an unprecedented opportunity to skew the long distance marketplace by manipulating access charges paid by long distance companies and by other pricing methodologies. Again, this

---

[15] *Second Report and Order* in MM Docket No. 92-264 ("*Second Report and Order*"), para. 25.

[16] *In the Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal Ownership Limits*, MM Docket No. 92-264, Memorandum Opinion and Order on Reconsideration and Further Notice of Proposed Rulemaking, June 26, 1998, para. 37.

[17] Sprint estimates that the merged company would terminate 45% of the minutes that it also originates. (Sprint comments, p.25)

concern becomes even stronger once the RBOCs themselves are allowed to provide interLATA service.

c. Information services

The RBOCs are already permitted to provide information services. These companies are currently required to provide nondiscriminatory treatment of all information services providers under the Commission's open network architecture and comparably efficient interconnection rules. These rules have been extremely difficult to implement, however, and the risk of discrimination is great. If the merged company gives favorable interconnection or pricing terms to its own or any particular information services provider, the effects of that discrimination could be felt throughout the entire country. As noted earlier, if the merged company raises the costs of interconnection to its network, the effects of that cost increase could make it harder for the disfavored companies to compete everywhere; conversely, if the merged company gives favorable treatment to a particular information services provider, it will make it easier for that provider to compete nationwide. The larger the scope of the merged company's territory, the greater the potential effect that discrimination could have on the information services market.[18]

B. The Potential Benefits of this merger are speculative and unlikely to be realized by consumers.

1. Efficiency gains from the merger are not likely to be passed on to consumers.

The applicants claim that the merger will result in substantial efficiency gains. Even if we assume that this claim is accurate, the important question for policy-makers is not whether the

---

18 See, Sprint Comments, pp. 26-28.

mergers will benefit the companies, *but whether the mergers will benefit consumers.* In CPI's view, it is doubtful that these efficiency gains will be passed through to consumers under current marketplace conditions. The applicants face very limited competition today; they have little marketplace incentive to reduce rates, improve service quality, or otherwise flow the rewards of their merger to consumers. For the most part, these companies are regulated under price cap, price freeze, or other similar regulatory schemes that will not require them to reduce rates as a result of their lower costs. Thus, the applicants may keep these efficiency gains completely for themselves.

At most, the applicants argue that the mergers will put them in a stronger financial position as they face increasing competition. But this is actually little comfort to consumers and, in some sense, validates the concerns about the effect of these mergers on the development of competition. Even if this effect is counted as a benefit of the merger, CPI does not believe that this benefit alone can compensate for the risks of harm to competition detailed above.

2. The Commission should be highly skeptical of the alleged benefits of SBC-Ameritech's "National-Local" strategy.

Several commenters raised doubts about SBC-Ameritech's "national-local" strategy. CPI agrees with many of these criticisms, including the following:

a. If SBC believes entry into out-of-region local markets is a good business strategy post-merger, then it should be a good business strategy for SBC to enter Ameritech's markets in competition with Ameritech.

b. If SBC finds it to be unprofitable to enter out-of-region local markets prior to the merger, there is little reason to believe that SBC will find the strategy profitable after the merger.

c. The applicants each have tremendous capital, marketing, management and other resources available to them today. There is little reason to believe the applicants need to merge to acquire the resources needed to compete outside their regions.

III. MANY OF THE PROBLEMS ASSOCIATED WITH THE MERGER COULD BE SIGNIFICANTLY AMELIORATED IF THE APPLICANTS COMPLIED WITH THE ACT'S REQUIREMENTS TO OPEN THEIR NETWORKS TO COMPETITION.

Although the applicants maintain that they face significant competition in their home markets, it is impossible to predict today that sufficient competition will develop in the near future to counterbalance the influence the merged companies will have over telecommunications markets. To date, competition for local telephone services has not yet developed anywhere near the levels that can serve as a competitive restraint on the dominance of the incumbent local exchange carriers. According to one analyst, the competitive local exchange carriers (CLECs) have captured only about 4% of the local telephone revenues and between 2% and 3% of the nation's access lines.

For these reasons, CPI suggests that the FCC say "absolutely no" to the proposed merger unless and until SBC and Ameritech have complied fully with the requirements of the Telecommunications Act of 1996 to open their networks to competition. Over two and a half years ago, Congress directed all large incumbent local exchange carriers to provide interconnection on a nondiscriminatory basis to other competing LECs. Neither SBC nor Ameritech has successfully complied with these requirements in a single state.

There are two reasons why the FCC should link the proposed merger with companies' compliance with these market-opening requirements. First, the proposed merger diminishes the prospects for vibrant local telephone competition. The merger will strengthen companies with significant market power over local exchange service, enhancing their ability to compete unfairly against new entrants in the local telephone market. Requiring the companies to open their networks before allowing them to merge will make it less likely that the merged company could engage in discriminatory and anticompetitive behavior against new entrants. These market-opening requirements are essential to the prospects that new entrants will become viable local competitors. Once these companies become a fixture in the competitive landscape, their presence in the marketplace can go a long way towards mitigating the potential economic and political power of a merged company.

Second, denial of the proposed merger will give the companies a greater *incentive* to open their markets to competition. The theory of the 1996 Act was that interLATA relief would be the "carrot" that would induce the RBOCs to open their markets to competition. After two and a half years in which the RBOCs have made little progress toward this goal, it now appears that the prospect of long distance entry may not be a strong enough motive for the RBOCs to open their markets. If withholding long distance entry is not enough to induce them to open their networks, perhaps withholding approval of their merger will be.

Several parties allege that the applicants are deliberately slow-rolling the process of opening their markets to competition. In denying this application, the Commission does not have to decide whether or not SBC and Ameritech are acting in bad faith; the Commission need only focus on the actual experience of competitors in the marketplace and decide how the merger will affect this process of opening markets fully to competition. Not a single one of the ILECs has implemented a non-discriminatory operations support system or otherwise demonstrated that its network is open to competitors.

CPI understands that opening the local network to competitors is simply not easy and demonstrably takes a lot of time. But the complexity of this task is exactly why the FCC should keep the pressure on the ILECs to comply with the Act's requirements. Policy makers can be certain that the RBOCs will reduce their level of commitment to this task as soon as they receive the regulatory relief that they are seeking. We are also convinced that the merger will increase the incentives and abilities of the merged companies to resist the process of opening markets.

IV. CONCLUSION

The proposed merger poses significant threats to the achievement of the goal of Congress to promote competition for local exchange telephone service and raises other public interest concerns. The commenters have identified at least four reasons why this merger will directly harm the growth of competition for local telephone service. First, the merger removes a strong and experienced potential and, in some cases, actual competitor. Second, the merger increases both the company's ability and incentives to engage in anticompetitive activity. Third, the merger results in a loss of company that can be used to "benchmark" or compare the practices of one ILEC with another. Fourth, the merged company would have an increased ability to leverage its monopoly power over local telephone service into other related markets.

Furthermore, the alleged benefits of the RBOC mergers in terms of cost savings are speculative, and in any case, may not be reflected in lower rates to consumers. If the merger results in any cost efficiencies, it is unlikely that these efficiencies will be passed on to consumers. The applicant's proposed "national-local" strategy is highly suspect.

The applicants have not come close to opening their markets to competition. After two and one-half years, neither SBC nor Ameritech has complied with the requirements of the 1996 Act in a single one of their states. If the applicants had complied with these requirements, then the Commission could have some reason to predict that competitive forces would develop in sufficient strength to ameliorate many of the potential risks to competition posed by this merger. Because of the applicants' inability, for whatever reason, to comply with the requirements set forth by Congress, the FCC and the courts to open their local networks to competitors, these companies continue to hold a near-monopoly over local telephone service. The FCC cannot be certain at this time that local telephone competition will grow to sufficient levels to create a competitive check on the practices of these companies.

Most important, the Commission must consider the consequences of its decision in this case on the future of the telecommunications industry. If the Commission approves the pending merger, it is likely to encounter proposals to merge all the large ILECs into one carrier in the near future. Such a result could be devastating to the nation's telecommunications and political landscape.

For all these reasons, the proposed merger should be denied.

Respectfully Submitted,

John Windhausen, Jr.

Ronald J. Binz, President
Debra R. Berlyn, Executive Director
John Windhausen, Jr. General Counsel

Competition Policy Institute
1156 15th St. N.W. Suite 520
Washington, D.C. 20005

(202) 835-0202
(202) 835-1132 (fax)

Certificate of Service

I, Bridget J. Szymanski, hereby certify that on this sixteenth day of November, 1998, copies of the foregoing Comments of the Competition Policy Institute were served by hand or by first-class, United States mail, postage prepaid, upon each of the following:

Bridget J. Szymanski
Bridget J. Szymanski

Magalie Salas
Secretary
Federal Communications Commission
1919 M St., NW Room 222
Washington, DC 20554

ITS
1231 20th St., NW
Washington, DC 20036

Chief
Policy & Program Planning Division
Common Carrier Bureau
1919 M St., NW Room 544
Washington, DC 20554

Chief
International Bureau
2000 M St., NW Room 800
Washington, DC 20554

Jeanine Poltronieri
Wireless Telecommunications Bureau
2025 M St., NW Room 5002
Washington, DC 20554

Chief
Commercial Wireless Division
2100 M St., NW Room 7023
Washington, DC 20554

Danny Adams
Rebekah Kinnett
Kelley Drye & Warren
1200 19th St.,NW Suite 500
Washington, DC 20036

George Kohl
Debbie Goldman
Communications Workers of America
501 Third St., NW
Washington, DC 20001

Eric Branfman
Swidler Berlin Shereff Friedman
3000 K St., NW Suite 300
Washington, DC 20008

Ellis Jacobs
Edgemont Neighborhood Coalition
Legal Aid Society of Dayton
333 West First St., Suite 500
Dayton, OH 45402

Riley Murphy
Charles Kallenbach
E.Spire Communications
133 National Business Parkway Suite 200
Annapolic Junction, MD 20701

Brad Mutschelknaus
Marieann Machida
Kelley Drye & Warren
1200 19th St., NW Suite 500
Washington, DC 20036

Renee Martin
Richard Metzger
Focal Communications Corporation
200 N. LaSalle St.
Chicago, IL 60601

Janet Livengood
Hyperion Telecommunications, Inc.
DDI Plaza Two
500 Thomas St., Suite 400
Bridgeville, PA 15017-2838

William McCarty
Indiana Utility Regulatory Commission
302 W. Washington St., Room E306
Indianapolis, IN 46204

Mary Albert
Swidler Berlin Shereff Friedman
3000 K St., NW Suite 300
Washington, DC 20007

David Conn
William Hass
Richard Lipman
McLeodUSA Telecommunications
6400 C St., SW PO Box 3177
Cedar Rapids, IA 52406-3177

Kathleen O'Reilly
414 A St., SE
Washington, DC 20003

Frederic Ruck
NATOA
1650 Tysons Blvd, Suite 200
McLean, VA 22102

Steven Nourse
Public Utilities Commission of Ohio
180 E Broad St.
Columbus, OH 43215

Mark Grannis
Evan Grayer
Harris Wiltshire & Grannis
1200 Eighteenth St., NW
Washington, DC 20036-2560

Russell Blau
Robert Zener
Swidler Berlin Shereff Friedman
3000 K St., NW Suite 300
Washington, DC 20007

Dana Frix
Douglas Bonner
Swidler Berlin Shereff Friedman
3000 K St., NW Suite 300
Washington, DC 20007-5116

Thomas Gutierrez
Lukaas Nace Gutierrez & Sachs
1111 Nineteenth St., NW Suite 1200
Washington, DC 20036

Kenneth Baseman
Microeconomic Consulting & Research Assoc.
1155 Connecticut Ave., NW Suite 900
Washington, DC 20036

Richard Rindler
Douglas Bonner
Swidler Berlin Shereff Friedman
3000 K St., NW Suite 300
Washington, DC 20007-5116

Cynthia Bryant
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102

Angela Ledford
Keep America Connected
PO Box 27911
Washington, DC 20005

Robert Hoggarth
Angela Giancarlo
PCIA
500 Montgomery St., Suite 700
Alexandria, VA 22314-1561

Joseph Meissner
Cleveland Legal Aid Society
1223 West 6th St.
Cleveland, OH 44113

Walter Steimel, Jr.
Marjorie Conner
Hunton & Williams
1900 K St., NW Suite 1200
Washington, DC 20006

Merle Bone
Shell Oil Company
One Shell Plaza
PO Box 2463
Houston, TX 77252-2463

Terence Ferguson
Level 3 Communications, Inc.
3555 Farnum St.
Omaha, NE 68131

Frank Kelley
Peter Lark
Orjiakor Isiogu
Michigan Attorney General
525 West Ottawa St.
Lansing, MI 48909

Robert Tongren
Ohio Consumers Counsel
77 South High St., 15th Floor
Columbus, OH 43266-0550

Thomas Long
Utility Reform Network
711 Van Ness Ave., Suite 350
San Francisco, CA 94102

Brian Conboy
Thomas Jones
Michael Jones
Willkie Farr & Gallagher
1155 21st St., NW
Washington, DC 20036

Rick Guzman
Texas Office of Public Utility Counsel
PO Box 12397
Austin, TX 78711-2397

David Carpenter
Sidley & Austin
One First Chicago Plaza
Chicago, IL 60603

Janice Mathis
Rainbow/PUSH Coalition
930 E 50th St.
Chicago, IL 60615

Philip Verveer
Sue Blumenfeld
Willkie Farr & Gallagher
Three Lafayette Center
1155 21st St., NW
Washington, DC 20036

Anne Becker
John Cook
Indiana Office of Utility Consumer
100 North Senate Ave., Room N501
Indianapolis, IN 46204-2208

Martha Hogerty
Missouri Office of Public Counsel
PO Box 7800
Jefferson City, MO 65102

Rick Guzman
Texas Office of Public Utility Counsel
PO Box 12397
Austin, TX 78711-2397

Matt Kibbe
Citizens for a Sound Economy
1250 H St., NW Suite 700
Washington, DC 20005

Consumer Federation of America
1424 16th St., NW Suite 604
Washington, DC 20036

Mark Rosenblum
Aryeh Friedman
295 North Maple Ave.
Room 3252G3
Basking Ridge, NJ 07920

Charles Hunter
Catherine Hannan
Hunter Communications Law Group
1620 Eye St., NW Suite 701
Washington, DC 20006

John Wine
Kansas Corporation Commission
1500 SW Arrowhead
Topeka, KS 66604-4027

Anthony Epstein
John Morris
Stuart Rennert
Jenner & Block
601 Thirteenth St., NW
Washington, DC 20005

Lisa Smith
Lisa Youngers
MCI Worldcom
1801 Pennsylvania Ave., NW
Washington, DC 20006

David Porter
Richard Whitt
MCI Worldcom
1120 Connecticut Ave., NW
Washington, DC 20036